

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4685 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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VRAJ CO OP HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT & ORS.

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Appearance:

Shri M.C. Bhatt, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 01/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No. 1 herein) on 7th August 1995 as also the show-cause notice issued on 4th September 1995 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) calling upon the petitioner to show cause why the exemption order

passed on 17th June 1991 under sec. 20(1) thereof should not be cancelled are under challenge in this petition under art. 226 of the Constitution of India.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round certain parcels of land situated within the urban agglomeration of Vadodara. The lands belonged to one lady by the name of Aminaben, widow of Valibhai Mahmadbhai and other co-owners. They applied for exemption under sec. 20(1) of the Act with a permission to sell the said lands to the petitioner. By the order passed on 17th June 1991, such exemption came to be granted on certain terms and conditions. Its copy is at Annexure A to this petition. It was stipulated thereunder that construction was to be completed within 2 years from the date of the order and that no member from the list of members accompanying it was to be allotted a plot of land exceeding 200 square meters. It appears that the construction could not be completed within the stipulated time-limit of 2 years. Thereupon the petitioner made an application for extension of the time-limit. The time-limit for completion of the construction work was extended till 16th June 1994 by the order passed on 7th October 1993. It appears that the petitioner had again applied for extension by its application made on 14th June 1994. By the order passed on 2nd July 1994, the time-limit was extended for a further period of 6 months. Its copy is at Annexure B to this petition. It appears that the list of members submitted by the petitioner consisted of 240 persons. It appears that the petitioner constructed in all 298 dwelling units for its members. It appears that it enrolled in all 298 members in the scheme for construction of houses on the lands in question. It appears that the occupancy certificate was granted by the Municipal Corporation of Vadodara for 240 dwelling units. Its copy is at Annexure H to this petition. In the meantime, it appears that it came to the notice of the concerned officer of respondent No. 1 that the petitioner constructed more units than 240 dwelling units in respect of which the list of members was furnished by it pursuant to the order at Annexure A to this petition. It appears that he thought that there was breach of the relevant condition contained in the order at Annexure A to this petition. The action for cancellation of the order at Annexure A to this petition was thereupon contemplated under sec. 20(2) of the Act. An order came to be issued on 7th August 1995 presumably under the aforesaid statutory provision calling upon the petitioner to maintain status-quo with respect to the lands involved in the order at Annexure A to this petition. Its copy is

at Annexure D to this petition. It was followed by one show-cause notice of 4th September 1995 presumably under the aforesaid statutory provision calling upon the petitioner to show cause why the aforesaid order at Annexure A to this petition should not be cancelled. Its copy is at Annexure E to this petition. The petitioner filed its reply thereto on 27th September 1995. Its copy is at Annexure F to this petition. It appears that in the meantime the petitioner applied for the occupancy certificate from the Municipal Corporation of Vadodara. The matter appears to have been referred to respondent No. 1 for the purpose and by its communication of 12th October 1995 addressed to the Deputy Municipal Commissioner of the local authority, it was declared that there was no objection against grant of the occupancy certificate for 240 dwelling units without prejudice to the proceeding for breach of the relevant condition contained in the order at Annexure A to this petition. Its copy is at Annexure G to this petition. Pursuant thereto, the occupancy certificate at Annexure H to this petition appears to have been issued on 3rd February 1996. The petitioner appears to have made one more representation in the first week of May 1996 with respect to the proceeding initiated by the show-cause notice at Annexure E to this petition. Its copy is at Annexure I to this petition. Since nothing was done in the matter, the petitioner has moved this petition under art. 226 of the Constitution of India for questioning the correctness of the stay order at Annexure D to this petition as also the show-cause notice at Annexure E to this petition.

3. The stay order at Annexure D to this petition cannot be sustained in law even for a moment in view of the binding Division Bench ruling of this Court in the case of Vasantlal Chhotalal Khandwala v. The State of Gujarat and others reported in AIR 1994 Gujarat 26. In that case, in contemplation of the proceeding under sec. 34 of the Act, a stay order was issued directing the parties to maintain status quo without issuing any show-cause notice with respect to the contemplated proceeding. This Court has held that such interim direction could not have been issued without initiation of the proceeding under sec. 34 of the Act by means of a show-cause notice. By analogy, the aforesaid ruling will be applicable to the facts of the case. It is not in dispute that the order of interim direction at Annexure D to this petition was issued on 7th August 1995 in contemplation of the proceeding to be initiated under sec. 20(2) of the Act. The show-cause notice was issued on 4th September 1995 at Annexure E to this petition. It is thus clear that the order of interim direction at

Annexure D to this petition preceded the show-cause notice under the aforesaid statutory provision by about 4 weeks. This could not have been done in view of the aforesaid binding Division Bench ruling of this Court. The order of interim direction at Annexure D to this petition therefore deserves to be quashed and set aside.

4. So far as the show-cause notice at Annexure E to this petition is concerned, this Court would be reluctant to interfere with it at this stage. The petitioner has already filed its reply thereto on 27th September 1995 at Annexure F to this petition. It will be for respondent No. 1 to take appropriate decision in that regard. Any challenge to the show-cause notice at this stage can be said to be premature in view of the binding ruling of the Supreme Court in the case of Chanan Singh v. The Registrar, Co-operative Societies, Punjab and others reported in AIR 1976 SC 1821. In that view of the matter, it is neither desirable nor necessary to examine the validity of the show-cause notice at Annexure E to this petition at this stage.

5. In the result, this petition is accepted to the extent indicated hereinabove. The order passed by and on behalf of the State Government (respondent No. 1 herein) on 7th August 1995 at Annexure D to this petition is quashed and set aside. The challenge to the show-cause notice at Annexure E to this petition fails. Respondent No. 1 is directed to dispose of the proceeding initiated by the show-cause notice at Annexure E to this petition as expeditiously as possible preferably by 30th October 1996. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

6. Learned Assistant Government Pleader Shri Sompura for the respondents orally prays for maintenance of status quo by and on behalf of the petitioner during the pendency of the proceeding initiated under sec. 20(2) of the Act. I do not think such oral prayer can be accepted as the order at Annexure D to this petition has been set aside in view of the aforesaid Division Bench ruling of this Court and no other order of interim direction has been passed by and on behalf of respondent No. 1 under sec. 20(2) of the Act.

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